

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 NSAE-00 NSCE-00 SSO-00

USIE-00 INRE-00 PM-07 H-03 INR-10 L-03 NSC-07 PA-04

RSC-01 PRS-01 SPC-03 SS-20 NEA-10 TRSE-00 SAJ-01 IO-14

ACDA-19 SCA-01 DRC-01 /131 W
----- 120208

O R 161028Z MAR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 1128

INFO USMISSION BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

USMISSION NATO BRUSSELS

AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 04196

E. O. 11652: GDS

TAGS: PGOV, WB, GE, GW, US, FR, UK, UR

SUBJECT: RESPONSE TO SOVIET PROTEST ABOUT FRG LAW ON
PRIVILEGES AND IMMUNITIES

REF: (A) STATE 50088, (B) BONN 3602

1. SUMMARY: AT MARCH 15 MEETING NEW SHORTER BONN GROUP
AD REFERENDUM TEXT FOR ALLIED REPLY TO SOVIET PROTEST
ABOUT FRG LAW ON PRIVILEGES AND IMMUNITIES WAS AGREED,
WITH FONOFF PRESSING FOR SWIFT CONSIDERATION BY CAPITALS
IN VIEW OF RECENT INNER-GERMAN AGREEMENT ON EXCHANGING
PERMANENT MISSIONS. APART FROM REPLY TO SOVIETS,
HOWEVER, BRITISH HAVE RAISED SERIOUS LEGAL PROCEDURAL
CONSIDERATIONS RELATING TO EVENTUAL ALLIED ACTIONS ON
EXTENDING TO BERLIN ORDINANCES COVERING PRIVILEGES
AND IMMUNITIES FOR GDR REPS. END SUMMARY.

2. IN DISCUSSION BASED ON DEPARTMENT'S TEXT (REF A),
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FOLLOWING DRAFT WAS AGREED FOR APPROVAL BY CAPITALS.

BEGIN TEXT: A. FEDERAL LAWS RELATING TO PRIVILEGES AND IMMUNITIES OF DIPLOMATS AND OTHERS WITH SIMILAR FUNCTIONS WHO ARE POSTED IN THE FEDERAL REPUBLIC HAVE FOR MANY YEARS BEEN TAKEN OVER IN THE WESTERN SECTORS OF BERLIN, SUBJECT TO APPROPRIATE RESERVATIONS BY THE ALLIED KOMMANDATURA REGARDING, INTER ALIA, MATTERS OF STATUS. THE ALLIED AUTHORITIES DO NOT CONSIDER THAT THE TAKING OVER OF THE FEDERAL LAW ON THE PERMANENT REPRESENTATION OF THE GERMAN DEMOCRATIC REPUBLIC BY EXACTLY THE SAME PROCEDURE CAN BE REGARDED AS INCONSISTENT WITH THE QUADRIPARTITE AGREEMENT OR "ILLEGAL". END TEXT

APPROVE NEW TEXT. THE FON OFF REP (LUECKING) SAID HE WAS CONFIDENT HIS AUTHORITIES WOULD AGREE, ESPECIALLY SINCE THEY NOW FEEL A PARTICULAR URGENCY FOR A SWIFT REPLY TO THE SOVIET PROTEST. LUECKING SAID THE REASONS FOR QUICK ACTION WERE, IN ADDITION TO THE MARCH 14 GAUS-NIER AGREEMENT ON PERMANENT REPRESENTATIONS, THE FACT THAT THE BUNDESRAT'S INNER-GERMAN AFFAIRS COMMITTEE WOULD BE DISCUSSING THE FEDERAL ORDINANCES IN BERLIN (BONN'S A-109, FEB. 28, 1974). ALLIED REPS AGREED TO ASK THEIR AUTHORITIES FOR EXPEDITIOUS ACTION ON THE NEW DRAFT.

4. THE TEXT IN PARA 1 ABOVE EMERGED AFTER THE BRITISH AGREED TO DROP A SECOND PARAGRAPH BASED ON PARA 3(B) REF A, UPON SOME FORM OF WHICH UK REPS HAD INSISTED FOR SOME TIME IN BERLIN AND BONN. BRITISH AGREED TO SHORTEN THE TEXT SINCE DISCUSSION (REPORTED BELOW) OF IT REVEALED OTHER CONSIDERATIONS UK BELIEVES TO BE QUITE IMPORTANT; ALL REPS AGREED BEST COURSE WOULD BE TO DISPATCH A REPLY TO BELETSKIY SOON, LEAVING FURTHER DISCUSSION WITH GERMANS FOR PRIORITY CONSIDERATION NEXT WEEK. ALL OTHER REPS STRONGLY PREFERRED THAT REPLY TO BELETSKIY TAKE FORM HE USED IN APPROACHING US IN JANUARY -- ORAL WITH NON-PAPER LEFT BEHIND. COMMENT AND ACTION REQUESTED: WE BELIEVE DANGERS OF LEAVING NON-PAPER OF TEXT ABOVE ARE SLIGHT AND RECOMMEND DEPARTMENT'S APPROVAL FOR DRAFT AND MODALITIES OF REPLY. WE WOULD ALSO SUGGEST THAT REPLY BE MADE CONFIDENTIAL

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BY CHAIRMAN POLAD AT EARLIEST CONVENIENT DATE, IF NECESSARY AS SOLE ITEM OF BUSINESS WITH BELETSKIY.

5. DISCUSSION OF ORIGINAL SECOND PARAGRAPH OF DRAFT REPLY REVEALED THAT FON OFF UNHAPPY WITH IT BECAUSE THERE WAS IN FACT NO BERLIN CLAUSE IN THE PROTOCOL GAUS AND NIER HAD SIGNED; THE PROTOCOL ITSELF WOULD NOT BE EXTENDED TO BERLIN, BUT RATHER ORDINANCES WHOSE

CARRYING OVER ALLIES HAD ALREADY APPROVED WHEN BK/O
ON SUBJECT ISSUED LAST FALL (BK/O (73) 7, SEPT 28,
1973).

6. THE BRITISH LEGAL ADVISER (BERMAN) REPLIED THAT
A MATTER OF LONG-STANDING PRECEDENT WAS NOW INVOLVED.

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 04196

HE SAID LAWS AND ORDINANCES CONCERNING OTHER NATIONS
HAD NEVER BEEN TAKEN OVER IN BERLIN UNLESS THE OTHER
STATE HAD SPECIFICALLY AGREED TO SUCH A PROCEDURE IN
THE AGREEMENT WITH THE FRG (AND THUS INCLUDED A
BERLIN CLAUSE IN THAT AGREEMENT). BERMAN FELT IN
PARTICULAR THAT REFERENCE TO THE RECENT FRG-GDR AGREE-
MENT ON EXCHANGE OF PERMANENT MISSIONS WOULD MAKE
ALLIED REPLY WEAK VIS-A-VIS SOVIETS, ESPECIALLY SINCE
THEIR ORIGINAL PROTEST HAD ASKED THAT ALLIES NOT

PERMIT EXTENSION TO THE WSB OF THE ORDINANCES (BONN 194, JAN 4, 1974). COMMENT: IN INFORMAL DISCUSSIONS WITH THE BRITISH AND OTHERS MARCH 15, WE URGED DROPPING OF SECOND PARAGRAPH AS SOLUTION ALL COULD RECOMMEND AND THAT WE BELIEVED REFLECTED SOME OF DEPARTMENT'S THINKING ON SUBJECT (STATE 6883). THIS IDEA WAS ACCEPTED BY FRENCH, UK AND FRG REPS.

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7. WHILE THE SOLUTION AGREED MAY HELP SOLVE IMMEDIATE (AND ADMITTEDLY NOW MORE PRESSING) PROBLEM OF REPLYING TO SOVIETS, THE BRITISH-GERMAN DIFFERENCES ON CARRYING OVER OF THE ORDINANCES TO BERLIN REMAIN. THE UK REPS HAVE TOLD US PRIVATELY THEY FEEL THERE HAS BEEN INSUFFICIENT CONSULTATION BY FRG WITH ALLIES ON THIS MATTER, AND THEY ARE NOT SANGUINE THERE CAN BE AN EARLY RESOLUTION OF THE LEGAL/PROCEDURAL PROBLEMS THEY SEE. WE DO SEE THE UK POINT: WHEN BK/O (73) 7 WAS ISSUED LAST FALL, IT WAS GENERALLY ASSUMED ANY EVENTUAL INNER-GERMAN AGREEMENT ON THE SUBSTANTIVE QUESTION WOULD TAKE BETTER ACCOUNT OF BERLIN THAN HAS THE GAUS-NIER ACCORD. WE ARE GETTING A FEELING OF DEJA VU, INASMUCH AS THE BRITISH ARE NOW WONDERING TO US AND IN THE BONN GROUP IF IT IS REALLY SUCH A GOOD IDEA FOR THE ORDINANCES TO BE EXTENDED TO BERLIN AT ALL, BOTH FOR THE REASONS MENTIONED ABOVE AND BECAUSE (AS BERMAN HAS ARGUED ON AND OFF FOR MONTHS) THEY WONDER IF A PRACTICAL QUESTION REALLY ARISES -- THEY BELIEVE THE GDR REPS WOULD NEVER GO TO WEST BERLIN ANYWAY. WOULD APPRECIATE VIEWS OF DEPARTMENT AND USBER. HILLENBRAND

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